UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

AMERICAN EMPIRE SURPLUS LINES INSURANCE COMPANY	§	
Plaintiff,	§	
vs.	§	CIVIL ACTION NO. H-04-3652
LUZ FOOD SERVICES, INC., MARIA APODACA AND MARCO LUZ	§	
Defendants.	§	

MEMORANDUM AND ORDER

Before the court[1] is plaintiff American Empire Surplus Lines Insurance Company's ("American Empire") unopposed[2] motion for a more definite statement (Dkt. No. 14) filed pursuant to Federal Rule of Civil Procedure 12(e) in response to the counterclaim of defendant Maria Apodaca. For the reasons explained below, this motion is DENIED.

A motion for more definite statement under Rule 12(e) is generally disfavored and is used to provide a remedy only for an unintelligible pleading rather than a

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[1]This motion was referred to this magistrate judge for determination pursuant to 28 U.S.C. § 636(b)(1) (Dkt. No. 15).

[2]The plaintiff has not filed an opposing motion, so the court treats defendant's motion as unopposed. *See* S.D. Tex. Local Rule 7.4 (declaring that "[f]ailure to respond will be taken as a representation of no opposition"); *see also Daniels v. BASF Corp.*, 270 F. Supp. 2d 847, 850 (S.D. Tex. 2003).

correction for lack of detail. *See Davenport v. Rodriguez*, 147 F. Supp. 2d 630, 639 (S.D. Tex. 2001); *Nebout v. City of Hitchcock*, 71 F. Supp. 2d 702, 706 (S.D. Tex. 1999). Such motion is appropriate where a pleading is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading. *See* FED. R. CIV. P. 12(e); *DVI Business Credit Corp. v. Crowder*, 193 F. Supp. 2d 1002, 1009 (S.D. Tex. 2002). It is not appropriate as a substitute means for discovery. *See Mitchell v. E-Z Way Towers, Inc.*, 269 F.2d 126, 132 (5th Cir. 1959); *Nebout*, 71 F. Supp. 2d at 706. This is because the Federal Rules of Civil Procedure require only that a complaint include "a short and plain statement of the claim showing that the pleader is entitled to relief" and such a statement must simply "give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests." *See Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 512 (2002).

American Empire argues Apodaca's counterclaim needs to be repled because while it makes a prayer for relief, it does not give any factual allegations, nor does it assert any legal claims or causes of action showing that Apadaca is entitled to such relief. Thus, American Empire contends that it cannot reasonably frame a responsive pleading to the counterclaim.

American Empire is an insurance provider seeking a declaratory judgment that it has no duty to defend or indemnify defendant Luz Food Services under its insurance

policy against the claim brought by defendant Maria Apodaca against Luz Food. *See* Dkt. No. 1, at ¶¶ 1, 18, 19. In her answer and counterclaim, Apodaca seeks a declaratory judgment that American Empire in fact does have a duty to defend Luz Food against her claim, and has a duty to indemnify for any judgment or settlement. *See* Dkt. No. 7, at 2. The crux of American Empire's suit is that the catering van, inside which Apodaca sustained the injuries for which she is seeking relief from Luz Food, is an "auto" that the insurance policy does not cover. *See* Dkt. No. 1, ¶¶ 10-12. Apodaca states that the van is not an "auto" and therefore covered by the policy. *See* Dkt. No. 7, ¶¶ 11, 12. Apodaca's counterclaim, while certainly terse, gives American Empire fair notice of what Apodaca's claim is and the grounds upon which it rests–that the catering van is not an "auto" and therefore insurance coverage exists. After all, this is a counterclaim, so the party making the original claim should be aware of the nature of the claim and the grounds upon which it rests.

When the denials in the counterclaim are read in context with the averments in American Empire's complaint, there is fair notice of the nature of Apodaca's counterclaim and a general indication of the type of litigation involved–this is an insurance coverage dispute where Apodaca's denies American Empire's interpretation of the insurance policy. "[M]otions for a more definite statement should be limited to those few instances in which a significant advancement of the litigation will result from

a grant of the ... motion." 5C C. Wright & A. Miller, *Federal Practice and Procedure* § 1376 (3d ed. 2004). Here, it is hard to see how requiring Apodaca to replead her counterclaim and simply state the same facts that are in American Empire's original complaint would advance this litigation. Apodaca's pleading satisfies the notice function that is the core of the pleading process under the federal rules,[3] and accordingly, American Empire's motion for a more definite statement is DENIED.

Signed on December 15, 2004, at Houston, Texas.

Stephen Wm. Smith
United States Magistrate Judge

[3] *See Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 512 (2002); *see also* 5 C. Wright & A. Miller, *Federal Practice and Procedure* § 1215 (3d ed. 2004).